

File R/W: Los Osos Wastewater Project
Parcel No. 074-144-001
Owner: Timothy Rocco Solipasso, Trustee

REAL PROPERTY TRANSFER AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between Timothy Rocco Solipasso, as Trustee of the Revocable Living Trust Agreement, dated August 4, 2005, hereinafter collectively referred to as "GRANTOR" and the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California, hereinafter referred to as "COUNTY";

In consideration of the mutual covenants, conditions, promises and agreements herein set forth, it is mutually agreed as follows:

I. An instrument in the form of a Grant Deed (hereinafter "DEED") covering the property particularly described therein (hereinafter, the "Subject Property") has been executed by GRANTOR concurrently with this Agreement and delivered to COUNTY representatives. Said DEED shall be recorded only in accordance with the terms and conditions of this Agreement.

II. The parties have herein set forth the whole of their agreement in conjunction with the execution, delivery, and recording of the DEED. The performance of this Agreement constitutes the entire consideration for the DEED and shall relieve the COUNTY of all further obligation or claims relating to any uses, activities, improvements or work within the scope of the DEED and any relocation benefits that may pertain.

III. Notwithstanding the foregoing, nothing in this Agreement shall be interpreted as diminishing or limiting in any way the nature, scope or extent of the COUNTY's property rights described in the DEED.

IV. SALE CONTINGENCIES

TESTING, INSPECTION, ENTRY ON PREMISES, AND RESPONSIBILITY FOR CONDITION OF PREMISES – GRANTOR grants to COUNTY, and its authorized agents, employees, and contractors permission to enter upon the Subject Property at all reasonable times prior to close of escrow for the purpose of making inspections, tests, borings, samplings, and other such investigations as COUNTY shall deem reasonable to determine the physical condition of the Subject Property, including, but not limited to, the existence of contamination of the Subject Property by "hazardous materials", the geophysical condition of the Subject Property, the biological condition of the Subject Property relative to environmental mitigation issues, and the existence of any archeological resources. Should COUNTY discover any physical condition of the Subject Property which COUNTY deems unacceptable, COUNTY may terminate this Agreement and cancel the escrow, by giving written notice to GRANTOR and escrow holder, on or before one hundred and eighty days from execution by COUNTY of this Agreement. Upon receipt of written notice of COUNTY's intent to terminate this Agreement, escrow holder shall return any money and documents deposited in escrow to the party originally making such deposit, and neither party shall have any further obligation to the other under this Agreement. COUNTY's failure to give written notice of non-acceptance of the condition of the Subject Property per the provisions of this paragraph shall be deemed COUNTY's acceptance of all such conditions of the Subject Property as COUNTY could have discovered by reasonable inspection, testing, boring, sampling, and other investigations of the Subject Property. In lieu of termination, COUNTY and GRANTOR may negotiate an adjustment to the purchase price based upon the corrective and remedial costs identified through COUNTY's inspection and testing

processes. Such adjusted purchase price shall be documented and agreed to through an escrow amendment approved in writing by the parties. The purchase price reflected in Paragraph V of this Agreement reflects the fair market value of the Subject Property without the presence of hazardous substances.

As used in this Agreement, the term "hazardous materials" means all flammable, explosive, noxious, toxic, or otherwise dangerous materials, wastes, products, or substances, the handling, use, discharge, or release of which is regulated or the contamination by which is prohibited by any federal, state, or local statute, ordinance, rule, or regulation, including, but not limited to, those substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; The Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; The Resource Conservation & Recovery Act, 42 U.S.C. Section 6901, et seq.; and also including those substances defined as "hazardous waste" in Section 25117 of the California Health and Safety Code or as "hazardous substances" in Section 25316 of the California Health and Safety Code; and those chemicals to which reference is made in the Safe Drinking Water and Toxic Enforcement Act of 1986, Section 25249.5, et seq. of the California Health and Safety Code.

GRANTOR represents and warrants that to the best of its knowledge, during GRANTOR's ownership of the Subject Property, there have been no disposals, releases, or threatened releases of hazardous substances on, from, or under the Subject Property. GRANTOR further represents and warrants that it has no knowledge of disposal, release, or threatened release of hazardous substances on, from, or under the Subject Property which may have occurred prior to GRANTOR taking title to the Subject Property. These representations shall survive the close of escrow, and shall accrue for the benefit of COUNTY and its successors and assigns.

V. COUNTY RIGHTS AND OBLIGATIONS

A. PAYMENT – The COUNTY shall pay to the order of the GRANTOR the sum of **SIXTY SIX THOUSAND NINETY FOUR DOLLARS** (\$66,094). Said sum shall be paid upon the close of escrow, which shall occur when the referenced DEED is conveyed to the COUNTY free and clear of all liens, encumbrances, assessments, easements, leases (recorded or unrecorded), and all taxes, except:

(1) Recorded easements or rights of way over said land for public right of way or public utility purposes, if any.

(2) Other items as may be approved by COUNTY in writing prior to the close of escrow.

B. RECORDATION OF INSTRUMENTS – The COUNTY shall accept the DEED herein referenced and cause the same to be recorded in the office of the San Luis Obispo County Recorder at such time as when title acceptable to COUNTY can be conveyed.

C. MISCELLANEOUS COSTS – The COUNTY shall pay any escrow and recording fees incurred in this transaction, and if title insurance is desired by the COUNTY, the premium charged therefor.

D. CLEARANCE OF BONDS, ASSESSMENTS, OR TAXES – The COUNTY shall have the authority to deduct and pay from the amount shown in Paragraph V.A. above, any amount necessary to satisfy any delinquent taxes due in any fiscal year except the fiscal year in which this escrow closes, together with penalties and interest thereon, and/or

delinquent or non-delinquent assessments or bonds except those which title is to be taken subject to, in accordance with the terms of this Agreement.

VI. GRANTOR RIGHTS AND OBLIGATIONS:

A. THIRD PARTY CLAIM INDEMNIFICATION – GRANTOR warrants that GRANTOR owns the Subject Property in fee simple, that GRANTOR has the exclusive right to grant the property rights and interests described in the DEED, and that there are no oral or written leases, licenses or other third party claims on all or any portion of the Subject Property exceeding a period of one month that would affect the COUNTY's full rights of title, or exclusive ownership of, the property rights and interests described in the DEED. GRANTOR covenants and agrees to indemnify, defend and hold harmless the COUNTY and its officers and employees, from and against any and all claims, damages, expenses, losses and costs (hereinafter collectively "Costs") whatsoever arising out of, or in any way related to any such third party claims.

B. PERMISSION TO ENTER – Upon GRANTOR's execution of this Agreement, GRANTOR immediately grants to the COUNTY, its agents and contractors, permission to enter upon and use the Subject Property prior to recordation of the DEED for purposes of preparation for and construction of any work or improvement within the scope of the DEED or this Agreement, subject to all applicable terms and conditions contained in this Agreement and the associated DEED.

C. HAZARDOUS WASTE – The GRANTOR hereby warrants and represents that the GRANTOR has no reason to believe that any hazardous waste, extremely hazardous waste, or hazardous substance (as those terms are defined in sections 25117, 25115, and 25316 of the California Health and Safety Code) has come to be located on, beneath or within any of the properties covered by the DEED or this Agreement. If GRANTOR ever becomes aware of the presence of any hazardous waste, extremely hazardous waste, or hazardous substance on, beneath, or within these areas, GRANTOR shall immediately so advise the COUNTY.

D. WARRANTY OF TITLE – GRANTOR hereby warrants and represents that (1) GRANTOR has sufficient title in the Subject Property to fully convey to the COUNTY all of the property rights and interests described in the DEED and (2) that GRANTOR'S title in the Subject Property shall not be compromised or transferred by any voluntary or involuntary transfer of any property interest, or the voluntary or involuntary creation of any lien, in the Subject Property to someone other than the COUNTY prior to the close of escrow.

VII. GENERAL TERMS AND CONDITIONS:

A. ESCROW – The COUNTY may open an escrow in accordance with this Agreement at an escrow company of COUNTY's choice. Opening an escrow shall be at the COUNTY's sole discretion and COUNTY may decide to process this transaction without the use of an escrow agent. However, if an escrow company is utilized, this Agreement constitutes the joint escrow instructions of COUNTY and GRANTOR, and the escrow company to whom these instructions are delivered, hereinafter referred to as the "Escrow Agent," is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this escrow in the shortest possible time.

If an Escrow Agent is utilized, as soon as possible after opening of escrow, COUNTY will deposit the executed DEED by GRANTOR, with Certificate(s) of Acceptance attached, with Escrow Agent on GRANTOR'S behalf. COUNTY agrees to deposit the purchase price, as

described in V. A. above upon demand of Escrow Agent. COUNTY and GRANTOR agree to deposit with Escrow Agent all additional instruments as may be necessary to complete this transaction. All funds received in this escrow shall be deposited with other escrow funds in a general escrow fund account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such account.

(1) ESCROW AGENT DIRECTIVES – Escrow Agent is authorized to, and shall:

(a) Pay (and charge GRANTOR) for any prorated taxes, unpaid taxes and/or any penalties and interest thereon and for any assessments or bonds against that portion of GRANTOR's real property subject to this transaction.

(b) Pay (and charge COUNTY) for any escrow fees, charges and costs payable under Paragraph V.D. of this Agreement.

(c) Comply with any Federal and State Tax Withholding requirements applicable to this transaction.

(d) Disburse funds and deliver DEED when conditions of this escrow have been fulfilled by COUNTY and GRANTOR.

(e) Following recording of DEED from GRANTOR, provide COUNTY with a CLTA Standard Coverage Policy of Title Insurance in the amount of purchase price issued by First American Title Company showing that title to the real property interests described in the DEED is vested in COUNTY, subject only to the following exceptions, and the printed exceptions and stipulations in said policy:

(i) Items No. 1 through 3 of the preliminary title report issued by First American Title Company, dated November 11, 2013, referenced as File No. 4001-4135618 (LI).

Notwithstanding the foregoing, in no event shall the DEED be subject to, encumbered by, or take exception to any mortgage(s), deed(s) of trust, property taxes, assessments or any other monetary encumbrance.

(2) CLOSE OF ESCROW – Regardless of whether or not the COUNTY chooses to use an independent escrow agent to complete this transaction, the term "close of escrow", shall mean the date the necessary instrument(s) of conveyance are recorded in the office of the County Recorder and submitted to Department of Housing and Community Development (if necessary) in accordance with this agreement. Recordation of instruments delivered through this escrow is hereby authorized. The parties agree that close of escrow should occur within 90 days of the COUNTY's execution of this Agreement and that this is a reasonable period of time for the close of escrow. In the event escrow does not close within said time period, GRANTOR and the COUNTY's Director of Public Works (or his designee) may agree in writing to an extension of this time.

B. TAX REPORTING AND WITHHOLDING – The Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"), as amended by the Tax Reform Act of 1984, places special requirements for tax reporting and withholding on the parties to a real estate transaction where the transferor (Seller) is a non-resident alien or non-domestic corporation or partnership, or is a domestic corporation or partnership controlled by a non-resident or non-

resident corporation or partnership. In accordance with the provisions of Section 1445 of the Internal Revenue Code of 1954, as amended, and any regulations promulgated thereunder, Seller shall execute an affidavit under penalty of perjury setting forth Seller's name, address, federal tax identification number, and certifying whether Seller is a "foreign person" in accordance with the provisions of the Internal Revenue Code. Further, tax withholding may be required in accordance with the California Revenue and Taxation Code Section 18662. It is specifically understood and agreed by Seller that closing of this escrow is subject to, and contingent upon, deposit into escrow of a FIRPTA Affidavit of Non-Foreign Status and a California Form 593-C, Real Estate Withholding Certificate and associated required paperwork, completed and signed by Seller, and Escrow Agent is hereby authorized and instructed to withhold from Seller's proceeds amounts so required by these laws and to forward any amounts withheld to the appropriate taxing authority.

C. DEFAULT BY GRANTOR – In the event GRANTOR breaches this Agreement and does not convey to the COUNTY the property interests described in the referenced Deed and this Agreement pursuant to the terms of this Agreement within a reasonable time, the COUNTY may file an action in eminent domain to pursue the acquisition of these property interests. In the event the COUNTY does file such an eminent domain action, this Agreement shall constitute a legally binding admission by GRANTOR and GRANTOR's successors and assigns of the following matters:

- (1) the date of valuation of the Subject Property shall be the date the COUNTY signed this Agreement;
- (2) that the sum of **SIXTY SIX THOUSAND NINETY FOUR DOLLARS** (\$66,094) constitutes the total amount of compensation and damages for the taking of the property interests described in the Deeds and this Agreement, including all of the items listed in Section 1260.230 of the Code of Civil Procedure; and
- (3) the right of possession of the Subject Property granted the COUNTY under section VI.B. above shall remain in place until said eminent domain action is concluded through either a final judgment or dismissal.

Notwithstanding the foregoing, nothing in this Agreement shall affect any other rights the COUNTY may have as a result of GRANTOR'S inability or failure to convey the referenced DEED pursuant to the terms of this Agreement within a reasonable time, including, but not limited to, any rights the COUNTY may have to seek specific performance and/or damages.

D. ARTICLE HEADINGS – Article headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants and conditions of this Agreement.

E. COMPLETE UNDERSTANDING – This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions, and preliminary agreements or understandings, written or oral. This Agreement may not be amended except in writing by the parties hereto or their successors or assigns. In the event the GRANTOR does convey the referenced DEED to the COUNTY pursuant to the terms of this Agreement, the consideration set forth in this Agreement constitutes the entire consideration for the DEED and this Agreement, including all applicable compensation and damages related to GRANTOR'S Claim For Payment Of Expenses Actually incurred dated 12/06/2013, and related to the categories listed in Section 1260.230 of the Code of Civil Procedure.

F. COUNTY APPROVAL – This Agreement is subject to and conditioned upon approval

and ratification by the County of San Luis Obispo. This Agreement is not binding upon the COUNTY until executed by the appropriate COUNTY official(s) acting in their authorized capacity.

G. COUNTERPARTS – This Agreement may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and all such counterparts together shall constitute one and the same document.

H. INTERPRETATION – Neither party shall be deemed the party which prepared this agreement within the meaning of California Civil Code section 1654. Should any provision herein be found or deemed to be invalid, this agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect.

No Obligation Other Than Those Set Forth Herein Will Be Recognized.

GRANTOR: TIMOTHY ROCCO SOLIPASSO, as Trustee of the Revocable Living Trust Agreement, dated August 4, 2005.

Dated: 12.06.13

By: Timothy Rocco Solipasso
TIMOTHY ROCCO SOLIPASSO, Trustee

GRANTOR'S MAILING ADDRESS:

Timothy Rocco Solipasso
1396 E. Fallbrook
Fresno, CA 93720

COUNTY OF SAN LUIS OBISPO

Chairperson of the Board of Supervisors
County of San Luis Obispo

Dated: _____, 20____

ATTEST:
Julie L. Rodewald County Clerk-Recorder
and Ex-Officio Clerk of the Board of Supervisors
County of San Luis Obispo

Deputy Clerk

APPROVED AS TO FORM AND
LEGAL EFFECT:


RITA L. NEAL
County Counsel

By: 

Deputy County Counsel

RECOMMENDED FOR APPROVAL:

Department of Public Works:
PAAVO OGREN
Public Works Director

By: 

PHIL ACOSTA
Right of Way Agent